

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205963

DATE: May 11, 1982

MATTER OF: Blakeslee Arpaia Chapman, Inc.

DIGEST:

Where a potential subcontractor to a prime contractor allegedly acting for the Government files a timely initial protest with the prime against a subcontract award, a subsequent protest to GAO must be filed within 10 working days after notice of the prime contractor's initial adverse action. The protester's appeal of the prime's determination to the contracting Federal agency does not extend the time to file the subsequent protest with GAO.

Blakeslee Arpaia Chapman, Inc. (Blakeslee) protests the proposed award of a contract to the George C. Harms Construction Co., Inc. (Harms) under invitation for bids (IFB) No. AM-81-JHECJEF/JHFCJFF. The IFB was issued by the National Railroad Passenger Corporation (Amtrak), a prime contractor of the Federal Railroad Administration, Department of Transportation (DOT), for certain section improvements as part of the Northeast Corridor Improvement Project. We dismiss the protest because it was not timely filed.

Blakeslee basically contends that the low bid submitted by Harms is nonresponsive because it failed to comply with certain IFB requirements concerning the submission of a minority business enterprise subcontractor plan. Alternatively, Blakeslee argues that Harms is nonresponsive.

Blakeslee filed an initial protest with Amtrak, which Amtrak denied by letter dated November 9, 1981. Blakeslee then protested to DOT. DOT, however, affirmed Amtrak's determination and denied Blakeslee's protest by letter dated December 18, 1981. On December 29, 1981, Blakeslee protested here.

Blakeslee alleges that the prime contractor is acting for DOT, making this the type of subcontract protest that our Office will review under our decision in Optimum Systems Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Even assuming that Blakeslee is correct and we would consider the merits of the protest, we find that the protest is untimely filed under our Bid Protest Procedures.

Our Bid Protest Procedures require that if a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within ten working days of formal notification of initial adverse agency action. 4 C.F.R. § 21.2(a) (1981). In a subcontract protest such as this, where there is an initial timely protest filed with the prime contractor, we have held that a subsequent protest to our Office must be filed here within ten working days of notice of the initial adverse action taken by the prime contractor. Blakeslee Arpaia Chapman, Inc. and Charles Stokes d/b/a C. Stokes Construction Co., B-206394, March 8, 1982, 82-1 CPD 213, aff'd., B-206394.2, April 13, 1982, 82-1 CPD ____. Further, the protester's continued pursuit of its protest with the contracting agency does not extend the time or obviate the necessity to file a protest with our Office within ten working days of initial adverse agency action. Id.

Since Blakeslee's protest to our Office was not filed here within ten working days after the firm received Amtrak's denial of its protest, the protest is untimely and will not be considered on the merits.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel